

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : PART 33
-----X

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No.
167N-2005

-against-

MARK ORLANDO and HERVE JEANNOT,

Defendants.

-----X
Mineola, New York
April 18, 2005
20

B E F O R E: HONORABLE ALAN L. HONOROF
Acting Supreme Court Justice

A P P E A R A N C E S:

HON. DENIS DILLON
District Attorney of Nassau County
BY: ROBERT T. HAYDEN, ESQ.
Assistant District Attorney for the People

DENNIS LEMKE, ESQ.
Attorney for Defendant Orlando
114 Old Country Road
Mineola, NY 11501

DANIEL HOCHHEISER, ESQ.
Attorney for Defendant Jeannot
270 Madison Avenue
New York, NY 10016

MINUTES OF HEARING

Edward Dong
Official Court Reporter

1 A. That's correct.

2 Q. That encompassed all of about a half hour to 40
3 minutes?

4 A. Correct.

5 Q. During that time that you spoke to my client, was he
6 cooperative with you?

7 A. Yes.

8 Q. He signed the consent forms for both, correct?

9 A. Yes, he did.

10 Q. Buccal swab, clearly he indicated he would not mind
11 having either swabs placed inside his mouth to take whatever
12 was needed for DNA analysis; isn't that correct?

13 A. That's correct.

14 Q. Fully cooperated?

15 A. Yeah.

16 Q. You had no further conversation with my client?

17 A. No.

18 MR. LEMKE: I have nothing further. Thank you.

19 CROSS-EXAMINATION

20 BY MR. HOCHHEISER:

21 Q. Good afternoon, Detective. My client, Herve
22 Jeannot, you said you met him at about 12:30 a.m., correct?

23 A. 12:30 in the afternoon.

24 Q. In the afternoon, excuse me. And how long did you
25 spend with my client?

1 A. Total of less than 10 minutes.

2 Q. And did you have any -- withdrawn.

3 During that 10-minute period, did my client make any
4 statements to you?

5 A. No.

6 Q. Did you have any dealings with Mr. Jeannot or
7 meeting with Mr. Jeannot besides that approximately 10-minute
8 meeting at approximately 12:30 p.m.?

9 A. Not that I remember.

10 Q. And he was cooperative with you at all times in
11 connection with your request to take the buccal swab; is that
12 right?

13 A. Yes.

14 Q. He was polite?

15 A. Yeah.

16 MR. HOCHHEISER: Thank you.

17 THE COURT: Mr. Hayden?

18 MR. HAYDEN: Nothing, your Honor.

19 THE COURT: Thank you, Detective. You're
20 excused.

21 (Whereupon, the witness was excused.)

22 THE COURT: Mr. Hayden.

23 MR. HAYDEN: May we approach just a moment,
24 Judge?

25 (Whereupon, an off-the-record discussion occurred at the bench.)

1 THE COURT: All right, gentlemen, at this time
2 we'll break until 2 o'clock. Have a nice lunch.

3 (Luncheon recess.)

4 AFTERNOON SESSION

5 THE CLERK: Hearing continued. All sides
6 ready?

7 MR. HAYDEN: Ready.

8 MR. LEMKE: Yes, your Honor.

9 MR. HOCHHEISER: Ready.

10 THE COURT: There might be some application
11 about the defendant testifying in limine.

12 MR. LEMKE: I think I'll wait until Officer
13 Nash testifies.

14 THE COURT: That's fine. Mr. Hayden.

15 MR. HAYDEN: Judge, I just ask that, for the
16 record, I've given to both counsel a copy of what I've
17 marked Rosario 77, three typewritten pages from Manny
18 Nash. These are -- this is a typewritten version of
19 the handwritten notes that were already given to
20 defense counsel with the rest of the Rosario material.
21 I have a copy for the Court as well which I'm handing
22 up.

23 MR. LEMKE: Acknowledge receipt, your Honor.

24 MR. HOCHHEISER: Same.

25 THE COURT: Very good.

1 MR. HAYDEN: Also I would ask that the record
2 reflect I've given to the court reporter all of the
3 exhibits. I've made copies of all of the exhibits, and
4 I've indicated for the court reporter the numbers in
5 evidence of each of those exhibits along with those
6 exhibits that went into evidence during the course of
7 testimony.

8 THE COURT: That will make things far easier.

9 MR. HOCHHEISER: Judge, so we're clear,
10 Rosario 77 is based on Rosario 16 and 17, Mr. Hayden?
11 I don't want to delay things, Judge. We can ask him
12 questions at the right time if you want.

13 THE COURT: Okay. Before the end of the day
14 you'll have that answer. Mr. Hayden.

15 MR. HAYDEN: The answer is yes.

16 THE COURT: See, I told you.

17 MR. HAYDEN: May I proceed, your Honor?

18 THE COURT: Please.

19 MR. HAYDEN: People call Detective Manny
20 Nash.

21 D E T. M A N U E L N A S H, a witness called on behalf of
22 the People, after having been first duly sworn by the Clerk of
23 the Court and stating his command as the Nassau County Police
24 Department Robbery Squad and his shield as 875, was examined
25 and testified upon his oath as follows:

1 DIRECT EXAMINATION

2 BY MR. HAYDEN:

3 Q. Good afternoon, Detective.

4 A. Good afternoon.

5 Q. How long have you been a member of the Nassau County
6 Police Department?

7 A. Over 19 years.

8 Q. How long have you been a detective?

9 A. Eight years.

10 Q. How long have you been with the Robbery Squad?

11 A. About two months.

12 Q. What was your assignment in December of 2004?

13 A. I worked at the Fourth Squad.

14 Q. Do you know a man named Mark Orlando?

15 A. Yes.

16 Q. Describe him.

17 A. Male white, about five-foot-eight, heavy build.

18 Q. Do you see him in this courtroom today?

19 A. Yes.

20 Q. Please point him out for the Court and describe what
21 he's wearing today.

22 A. Man sitting there with the black sweater, black
23 pants.

24 MR. LEMKE: So stipulated, your Honor.

25 THE COURT: On stipulation, the record will

1 reflect identification.

2 Q. Do you know a man named Herve Jeannot?

3 A. Yes.

4 Q. Briefly describe him.

5 A. Male black, approximately five-foot-nine, medium
6 build.

7 Q. Do you see him in this courtroom today?

8 A. Yes.

9 Q. Point him out and describe what he's wearing today.

10 A. The male sitting there with the pink and black
11 striped shirt.

12 MR. HOCHHEISER: We stipulate to that
13 identification for this hearing, Judge.

14 THE COURT: The record will so reflect.

15 Q. I'm directing your attention to around 2:35 on the
16 afternoon of Friday, December 10 of 2004. Were you involved
17 then with investigating the death of a young man named Bobby
18 Calabrese?

19 A. Yes, I was.

20 Q. Were you at the Homicide Squad in police
21 headquarters then?

22 A. Yes.

23 Q. How did you become involved in the investigation of
24 Bobby Calabrese's death?

25 A. I was working the night of the murder.

1 Q. As a member of the Fourth Squad?

2 A. As a member of the Fourth Squad and I was assigned
3 to the case.

4 Q. Were you in the vicinity of Mark Orlando at around
5 2:35 that Friday afternoon?

6 A. Yes.

7 Q. Where was Mark Orlando then?

8 A. He was in the Homicide Squad office.

9 Q. Describe that location.

10 A. In police headquarters, at that time we were in the
11 center squad room at that office.

12 Q. Not an interview room?

13 A. No.

14 Q. Where were you with relation to Mark Orlando then?

15 A. I was standing behind him.

16 Q. Describe for the Court what happened then.

17 A. He had asked to make a phone call. I escorted him
18 out of the interview room, sat him at a desk close to the
19 interview room. He asked to call his sister, Gina Falco
20 [phonetic]. He gave me a phone number. I dialed it for him.
21 When the phone started ringing, I handed him the receiver.

22 Q. Did he speak over the phone then?

23 A. Yes.

24 Q. What did you overhear him say?

25 A. I heard him say, "It's Mark." He asked me where he

1 was. I told him he's in Mineola. He told the person on the
2 phone, "I'm in Mineola." He said he got arrested last night.
3 Can I refer to my notes?

4 MR. LEMKE: No objection, your Honor.

5 THE COURT: Yes.

6 MR. HAYDEN: If we can just have those
7 marked, Judge.

8 THE COURT: Are those the actual notes?

9 THE WITNESS: It's a copy.

10 THE COURT: Sure, let's mark it.

11 (Whereupon, People's Exhibit 19 was marked for
12 identification.)

13 THE COURT OFFICER: People's Exhibit 19 marked
14 for identification.

15 Q. Please proceed.

16 A. He told her, "I wasn't honest with you. When I went
17 to pay Robby, Herve killed him." He said he was cooperating,
18 that the cops are cool. They're giving him food and water.
19 He says, "They got me after work in the black car." He asked
20 me where the black car was. I told him it was impounded.
21 Mark asked me what the phone number was. I gave him the phone
22 number for the office we were at. He said, "No roughhousing,
23 nothing like that. They just wanted the truth. It's not like
24 that. They're very cool. I gave a full statement." He said,
25 "Take care of that, please." He said, "I think I'm going to

1 jail because of my involvement in this. Whatever they need
2 make available. Make the house and car available." And he
3 said, "You understand why I've been nervous."

4 Q. Is that it?

5 A. Yes.

6 Q. Did you have any conversation with Mark Orlando
7 after he finished that telephone conversation?

8 A. No.

9 Q. What did you do with Mark Orlando after he finished
10 that telephone conversation?

11 A. Brought him back into the interview room.

12 Q. I'm directing your attention to around 2:50 that
13 Friday afternoon. Were you still at the Homicide Squad then?

14 A. Yes.

15 Q. Were you in the vicinity of Herve Jeannot then?

16 A. Yes.

17 Q. Where was Herve Jeannot?

18 A. At that time he was in the interview room. He asked
19 to make a phone call. I escorted him out of the interview
20 room, sat him at a desk in the center squad room at the
21 Homicide Squad.

22 Q. What happened then?

23 A. He said he wanted to call home. He gave me the
24 phone number for his house. I dialed that number. There was
25 no answer. He then wanted to make another call, he said his

1 friend Ricardo. He gave me a phone number. I dialed that
2 number. It rang. I handed him the receiver and he spoke.

3 Q. Describe what you heard then.

4 A. He said, "Ricky --

5 MR. HOCHHEISER: Your Honor -- withdrawn.

6 A. He said, "Ricky, it's Herve. Got arrested last
7 night. When I was waiting for my brother. Have you spoken to
8 my brother?"

9 MR. HOCHHEISER: Your Honor, I'm going to
10 object to the reading.

11 THE COURT: Detective, if you can, do it by
12 memory. If you need to refer to your notes, do so.

13 THE WITNESS: Okay.

14 A. He asked, "Have you spoken to my brother?"

15 Q. Are those notes already marked, Detective?

16 A. Yes. He said he didn't know his brother's off the
17 top of his head, but please call my brother, tell him to call
18 George. That's basically it.

19 Q. Did you have any conversation with Herve Jeannot
20 after he finished with the telephone conversation then?

21 A. We had left off that we'd try to call his house
22 later on.

23 Q. What did you do with Herve Jeannot after that
24 telephone conversation was finished?

25 A. Put him back in the interview room.

1 Q. I'm directing your attention to around 5:35 that
2 Friday afternoon. Were you still at the Homicide Squad then?

3 A. Yes.

4 Q. What happened then?

5 A. I asked Herve if he wanted to try home again. He
6 said yes. I brought him out of the interview room to the
7 telephone, tried calling his house twice and both times there
8 was no answer. He then asked to call his friend Ricky again.
9 We dialed that number. He spoke to his friend Ricky.

10 Q. Describe anything you overheard then.

11 A. He asked Ricky if he spoke to his brother yet. He
12 then said, "Let me speak to him." He said, "I'm still in
13 Mineola. Arraignment tomorrow. Be easy on mom. She's going
14 to find out eventually." He spoke about a car, an initial
15 payment, something to that effect. Then asked him to take the
16 collect call block off at home so he could call home. He said
17 if he goes to the county jail, you got to take the block off
18 so I can call home.

19 Q. Anything else?

20 A. No.

21 Q. What did you do with Herve Jeannot after he finished
22 that telephone conversation?

23 A. I returned him to the interview room.

24 MR. HAYDEN: Nothing further at this time, your
25 Honor.

1 THE COURT: Gentlemen?

2 CROSS-EXAMINATION

3 BY MR. LEMKE:

4 Q. Detective, regarding Mark Orlando, I'd ask, it's
5 my understanding that on December 10 at about 2:35 in the
6 afternoon my client was taken to a phone to use; is that
7 correct?

8 A. Yes.

9 Q. And was that at the request of Detective McHugh or
10 anyone else?

11 A. No, it was at the request of Mark.

12 Q. So Mark asked you, "Please, Detective, can I now use
13 the phone?"

14 A. Yes.

15 Q. You brought him out to another room, correct?

16 A. Yes.

17 Q. Sat him down and he wasn't handcuffed, was he?

18 A. Not at that time, no.

19 Q. And at that point did you ask him what number he's
20 dialing or did you dial the number for him?

21 A. I asked him what number he wanted to call. I wrote
22 it down and I dialed it for him.

23 Q. And that was in fact recorded by yourself as to the
24 number that he called, correct?

25 A. Yes.

1 Q. And the person that he was calling, correct?

2 A. Well, he told me the person he was calling. I don't
3 actually know who that number belongs to.

4 Q. Now, when he's making this phone call, you don't
5 tell him, "Listen, I'm going to be listening to your
6 conversation. I'm going to be standing right behind you," do
7 you?

8 A. Did I tell him that? No.

9 Q. In fact, when you say you overheard him, when you
10 bring him out, you're going to stand there to listen to his
11 conversation, aren't you?

12 A. I'm standing there to guard a prisoner also, yes.

13 Q. Well, to guard the prisoner but you clearly were
14 within two feet of him, correct?

15 A. Yes.

16 Q. And you have a piece of paper in your hand, don't
17 you?

18 A. Yes.

19 Q. And pen in your hand, don't you?

20 A. Yes.

21 Q. You're going to write down everything you hear him
22 say, correct?

23 A. Correct.

24 Q. You're not guarding him with the pen and piece of
25 paper, no?

1 A. With the pen, no, I'm not guarding with him with the
2 pen.

3 Q. So you are there for the purpose of listening to his
4 conversation and recording down what was said?

5 MR. HAYDEN: Objection.

6 THE COURT: Sustained.

7 Q. So you're writing down everything he says,
8 correct?

9 A. Yes.

10 Q. You don't handcuff him to, say, a chair while he's
11 making the phone call and walk away, correct?

12 A. No.

13 Q. Now, as he's having this conversation, you are not,
14 of course, listening on another phone, are you?

15 A. No.

16 Q. But you said you picked up another phone. You had
17 another phone call?

18 A. No, I didn't say that.

19 Q. So you're writing down his conversation and you
20 wrote down that he says, "It's Mark," correct?

21 A. Yes.

22 Q. He says -- and he asks you, "Where am I?" Correct?

23 A. Yes.

24 Q. So you're having still a little bit of a
25 conversation with him while he's having this conversation,

1 right?

2 A. He's asking me questions. I'm giving him the
3 information he wants.

4 Q. So he knows you're right there?

5 A. Absolutely.

6 Q. And he certainly sees you, as far as you know, with
7 the piece of paper and the pen in your hand, right?

8 A. Yes.

9 Q. And he goes on for maybe three minutes, two and a
10 half minutes with the conversation, correct?

11 A. Yes.

12 Q. He says to whom he's talking to that it's Herve that
13 killed him, correct?

14 A. Say it again. I'm sorry.

15 Q. That Herve killed him is what he told the person
16 that he was speaking to, correct?

17 A. Yes.

18 Q. He said that, "I'm cooperating," correct?

19 A. He did.

20 Q. He says that the cops are cool; could be worse.
21 Correct?

22 A. Yes.

23 Q. They gave me food and water, correct?

24 A. Yes.

25 Q. And they wanted me to tell the truth, so I told them

1 the truth, correct?

2 A. Yes.

3 Q. That they got me after work in the black car?

4 A. Yes.

5 Q. And then he turned to you and he asked, "Where's the
6 black car?" And you said it was impounded, right?

7 A. Correct.

8 Q. He asked you what the phone number is here and
9 573-7788, I take it, is what you had given him?

10 A. Yes.

11 Q. And he goes on to say -- and you're still there.
12 You're not walking away, correct? -- that he went to GNC.
13 They picked me up there?

14 A. Yes.

15 Q. He also said, "They wanted the truth. I told them
16 the truth. There was no roughhousing, nothing like that,"
17 correct?

18 A. Yes.

19 Q. I gave them a full statement, correct?

20 A. Yes.

21 Q. He says that I think I'm going to jail because of my
22 involvement in this, correct?

23 A. Yes.

24 Q. He goes on to say that I told them where it is and
25 everything about it. I guess that's the car and the house,

1 correct?

2 A. I don't know what he meant by that, but that is what
3 he said.

4 Q. And then he also says, "Now you understand why I've
5 been so worried," correct?

6 A. Yes.

7 Q. Then he hung up, right?

8 A. Yes.

9 Q. Now, that wasn't the only call he made at that time,
10 correct?

11 A. That's the only call I was present for that Mark
12 Orlando made.

13 Q. Did you then take him back to the cell at that time?

14 A. I brought him back in the interview room.

15 Q. There were no other calls made in your presence?

16 A. No.

17 Q. He didn't speak to Mr. Philips in your presence?

18 A. No.

19 MR. LEMKE: I have nothing further. Thank you,
20 your Honor.

21 CROSS-EXAMINATION

22 BY MR. HOCHHEISER:

23 Q. Good afternoon, Detective.

24 A. Good afternoon.

25 Q. I represent Herve Jeannot. My name is Daniel

1 Hochheiser. Do you have a copy of Rosario 77 in front of you,
2 Detective?

3 A. What is it?

4 Q. It's the typed out version of the phone calls that I
5 think you recently made.

6 A. Yes, I have a copy of it.

7 Q. This document, which is a three-page document, this
8 document you prepared based on your notes of the phone calls
9 of Orlando and Jeannot; is that right?

10 A. My handwritten notes, yes.

11 Q. And what was the purpose of your typing out Rosario
12 77?

13 MR. HAYDEN: Objection.

14 THE COURT: I know what the purpose is. It's
15 a harmless question.

16 A. To make it easier to read.

17 Q. And when did you do that? When did you do the
18 typing?

19 A. Yesterday.

20 Q. And was that your idea or Mr. Hayden's idea?

21 A. It was my idea.

22 Q. And in this you recorded the important details that
23 you overheard during Mr. Jeannot's conversation with Ricky,
24 correct?

25 A. During the conversation I wrote down everything I

1 heard him say, be it important or not. If I heard him say it,
2 I wrote it down.

3 Q. But there's nothing that he said that you heard
4 that's not contained in this three-page document, correct?

5 A. He said some stuff I could not hear or understand.
6 He's soft-spoken, difficult to hear. There were some things
7 he said on the phone that I could not hear. Needless to say,
8 I did not write it down.

9 Q. But as to everything you did hear, they're all
10 contained in this document, correct?

11 A. Correct.

12 Q. And you testified that you believed Mr. Orlando
13 certainly knew you were couple a feet behind him, right?

14 A. Yes.

15 Q. With a pad and a pen?

16 A. Yes.

17 Q. Did you have any other contact with my client on
18 either December 9 or December 10 besides arranging these phone
19 calls?

20 A. No.

21 MR. HAYDEN: Objection, to arranging these
22 phone calls.

23 MR. HOCHHEISER: I'll withdraw it. I'll
24 rephrase it.

25 Q. I understand he requested to make phone calls, and

1 you helped him, since he was a prisoner, to make those phones
2 calls. Did you have any other involvement with him besides
3 this meeting you had between 2:50 until whenever that phone
4 call was finished?

5 A. I think the only other involvement I had with him, I
6 escorted him to the bathroom.

7 Q. Did he say anything during that trip to the
8 bathroom?

9 A. No.

10 Q. Did you hear him make any other statements besides
11 what he said during those phone calls you overheard?

12 A. No.

13 MR. HOCHHEISER: Thank you.

14 THE COURT: Mr. Hayden?

15 MR. HAYDEN: Nothing, your Honor.

16 THE COURT: Thank you, Detective. You're
17 excused.

18 (Whereupon, the witness was excused.)

19 THE COURT: Mr. Hayden.

20 MR. HAYDEN: People rest, your Honor.

21 THE COURT: Defense counsel?

22 MR. LEMKE: Defense rests on behalf of Mark
23 Orlando, your Honor.

24 MR. HOCHHEISER: Defense rests on behalf of
25 Mr. Jeannot.

1 THE COURT: Are you gentlemen ready to argue?

2 MR. LEMKE: Yes, your Honor.

3 MR. HOCHHEISER: Yes, Judge.

4 THE COURT: Who wants to go first?

5 MR. LEMKE: I'll go first, your Honor. Your
6 Honor, clearly the purposes of the hearing for the last
7 three days is not so much the credibility of statements
8 but rather whether or not this Court will permit the
9 assistant district attorney, should they so choose to
10 at the time of trial, introduce either evidence that
11 was seized on behalf of my client or statements that
12 they have alleged to have been made. So clearly it's
13 become a Huntley hearing as well as a Mapp hearing.

14 I would certainly, for most of my argument,
15 rely on the record, but clearly, initially, it's a
16 matter for this Court to consider whether or not there
17 was probable cause for the arrest of my client, Mr.
18 Orlando, on December 9 at about 9:10.

19 THE COURT: Let me ask you a question, Mr.
20 Lemke.

21 MR. LEMKE: Yes.

22 THE COURT: Suppose that the police knew
23 absolutely nothing to connect either one of these
24 defendants to the murder, nothing at all, zero, but
25 they were aware that there was a warrant for each of

1 their arrest. Is there any other issue for me to
2 examine in terms of probable cause?

3 MR. LEMKE: There is not. I just want this
4 Court, in determining whether there was probable cause,
5 whether this Court, based upon the evidence testified
6 here, feels within its decision that the probable cause
7 was based upon warrants that were outstanding. And,
8 therefore, your question to me would be no, they don't
9 need anything else. They could certainly use that as a
10 pretext, as I would argue, if they so choose to do so
11 to pick up Mr. Orlando based upon a warrant that's
12 outstanding for his failure to appear in court and,
13 therefore, have every right to question him further.
14 And that's where I'm relying on the record. Not to
15 belabor that argument, but I think this Court should
16 have that in making the decision as to whether or not
17 there was enough or not.

18 THE COURT: I'm not going to forget about it.
19 I just want to be clear that I wasn't missing part of
20 your argument.

21 Mr. Hochheiser, I'm going to ask you the same
22 question, so please be ready with an answer.

23 Go ahead, Mr. Lemke.

24 MR. LEMKE: That certainly was my argument
25 regarding that. It then needs to be considered the

1 statements that were made then by my client whether,
2 one, the Miranda warnings were properly given to my
3 client for not only the first statement, which
4 according to the testimony here was given at 20 to
5 10:00 that evening of December 9, I believe, by
6 Detective McGinn. From that there was a statement that
7 was given. I'm not going to argue or belabor the
8 argument as to whether it's credible or not. Clearly
9 that's an issue for a jury, but whether or not at this
10 stage those warnings were properly given to my client
11 and that he properly and voluntarily waived his right
12 to not give a statement and do so.

13 You then have a period in time in which that
14 statement, according to the testimony, was then reduced
15 to writing at about 10 minutes after 12:00 on December
16 10 and was finished by 2 o'clock that morning, and then
17 there was a three-hour break. There had been some
18 testimony initially as to whether or not there were
19 Miranda warnings given again. But apparently -- and
20 again it's for this Court to consider whether in fact
21 they were given again -- so, therefore, the time frame
22 for that attenuates in any way the warnings given the
23 night before as well as given the next day at
24 apparently maybe 10 o'clock in the morning by Detective
25 Cereghino before the second statement is taken. So

1 clearly my argument to both those statements would be
2 that, especially the second one, that those Miranda
3 warnings were not in fact properly given to my client,
4 and this Court will make its decision whether it was or
5 not based on the evidence here.

6 You also have consent forms which my client
7 allegedly had signed. I'm going to rely on the record
8 as to whether or not they coerced him in signing those
9 documents as to whether to permit the People, if they
10 so choose to do so, to introduce any evidence that may
11 have been seized from my client's place of employment,
12 your Honor, as well as again the buccal swab, again,
13 whether or not that was consensual and voluntarily. So
14 I'm going to rely on the record for those arguments.
15 Thank you, your Honor.

16 THE COURT: Thank you, Mr. Lemke.

17 MR. HOCHHEISER: Your Honor, I am going to
18 ask you to suppress the statements attributed by the
19 police to my client based on two things: Number one, a
20 lack of probable cause. And I will answer your
21 question about the warrants. I believe that the
22 statements were obtained as fruits of this illegal
23 arrest. And, number two, I'm going to ask you to
24 suppress because the statements were involuntarily
25 made.

1 As to the issue if the police didn't know
2 anything about the case, if they never had that
3 briefing, if they never interviewed anybody and they
4 merely had the misdemeanor warrants, would this Court
5 have enough before it on the record to sustain a
6 finding of probable cause as to the arrest of Herve
7 Jeannot? I believe that the answer is no, and I
8 disagree with co-counsel perhaps slightly. I think
9 there is no question here that they were not arresting
10 Mr. Jeannot for misdemeanor warrants. We had a
11 debriefing in the auditorium of the Homicide Squad.
12 They were going to arrest two individuals who are
13 suspects in a homicide.

14 THE COURT: Would you agree with me that it
15 doesn't make any difference whatsoever what the police
16 thought they had or didn't have in terms of probable
17 cause, that that determination is up to me and that I
18 have no reason to decide that the police did not have
19 warrants when they arrested your client?

20 MR. HOCHHEISER: Well, I think that the Court
21 has an interest in not permitting the police to do an
22 end run around the Fourth Amendment and permit the
23 police to use a ruse of arresting somebody on one thing
24 when we all know, everybody in the courtroom knows, the
25 cops know they didn't arrest them for the warrants.

1 THE COURT: Like Al Capone.

2 MR. HOCHHEISER: Well, yes, like Al Capone,
3 exactly, Judge. Could they have gone and picked him up
4 and then brought them to criminal court and arraign
5 them on the misdemeanor warrants? Fine, no problem.
6 But to keep them in the Homicide Squad for overnight
7 for almost a dozen hours, questioning them about a
8 homicide, I mean, let's -- we see a duck, let's call it
9 a duck. This is an arrest for a homicide, not for
10 misdemeanor warrants.

11 THE COURT: The first threshold I have to get
12 to is whether or not the police had probable cause to
13 take your client into custody. I find the police to
14 have acted with a warrant.

15 MR. HOCHHEISER: And I agree they had a
16 warrant. I don't take issue with that. I would ask
17 you to find that the scope of their probable cause was
18 limited to those misdemeanor warrants, and they had to
19 act consistent with an arrest for those misdemeanor
20 warrants.

21 THE COURT: Do you have any cases as to the
22 scope of probable cause?

23 MR. HOCHHEISER: Not on me, Judge. I can do
24 research and get back to you.

25 THE COURT: Well, that would prevent me from

1 ruling from the bench. Let me just be content with
2 your answer of no.

3 MR. HOCHHEISER: Well, my answer is not no.
4 I don't know standing before you.

5 THE COURT: Do you want to try to take a look
6 at that?

7 MR. HOCHHEISER: Sure.

8 THE COURT: Okay. Because I don't have to
9 rule from the bench.

10 MR. HOCHHEISER: I think that, just to
11 complete the argument on probable cause, I don't think
12 there's any question the way this record reads the way
13 it is the only information and evidence the police had
14 at 9:15 p.m. or 9:10 p.m. on December 9, 2004, is that
15 they had spoken to Tom Flores and they had spoken to
16 Barbara Diamont who had statements from Mr. Orlando
17 which placed my client at the scene.

18 THE COURT: Didn't they have cell phone
19 records also?

20 MR. HOCHHEISER: Exactly, establishing
21 presence as well, presence. I don't think --

22 THE COURT: Presence at approximately the
23 scene of the crime and the time of the crime.

24 MR. HOCHHEISER: Absolutely, right. But
25 that's not enough just to be present. It's black

1 letter law that that is not evidence of criminal
2 activity, and they had no evidence as to what, if any,
3 Mr. Jeannot's role was in that incident.

4 THE COURT: Preventing them, in your opinion,
5 from reasonably detaining your client to investigate?

6 MR. HOCHHEISER: They could detain him based
7 on reasonable suspicion at that point.

8 THE COURT: Which you claim is not present.
9 I just want to understand your argument.

10 MR. HOCHHEISER: I'm talking about probable
11 cause.

12 THE COURT: I'm talking about reasonable
13 suspicion, reasonable detention for purposes of
14 investigation, having already taken the defendants into
15 custody pursuant to a valid warrant.

16 MR. HOCHHEISER: I would agree that having
17 evidence that places an individual at the scene of a
18 homicide with another person being the codefendant
19 would establish reasonable suspicion to detain and
20 question, but that, Judge --

21 THE COURT: Even without probable cause to
22 take them into custody?

23 MR. HOCHHEISER: I agree, Judge, but my
24 disagreement -- perhaps I'm not sure if we have a
25 disagreement. That's not this case. This case is they

1 made an arrest for the homicide.

2 THE COURT: See, that's where we're splitting
3 this hair.

4 MR. HOCHHEISER: Okay.

5 THE COURT: For sure they made an arrest.
6 For sure they had a warrant when they made the arrest.
7 In my opinion, for sure they had reasonable suspicion
8 to detain and investigate. That's our hair that we're
9 splitting.

10 MR. HOCHHEISER: Okay. And I don't think
11 we're going to come to common ground right now on that,
12 so I don't want to take up the Court's time with
13 further argument. And I will do my research and get
14 back to the Court on those issues.

15 As to the voluntariness issue, I believe that
16 it's clear on the record that my client was detained in
17 the second interview room at the Homicide Squad for
18 approximately 12 hours. I don't think there's -- well,
19 withdrawn.

20 My client maintained that he was not the
21 shooter in this case for hours and hours and hours, and
22 only after Detective Partee explained to him that he
23 had to take some of the weight, then he said, "Okay, I
24 shot him."

25 THE COURT: Fairly candid testimony by the

1 detective, wouldn't you say?

2 MR. HOCHHEISER: Say again?

3 THE COURT: Fairly candid testimony by the
4 detective.

5 MR. HOCHHEISER: Perhaps too candid, Judge.
6 I believe that that detective really was very candid,
7 in that he showed the coercion that we all know goes
8 on, and here's one detective who actually testified in
9 open court about it, about telling a guy, "You have to
10 take some of the weight. You have to say A, B and C or
11 you got big problems." He had a version of the truth
12 that he was seeking to corroborate through my client's
13 statements, and he wasn't happy with the prior
14 statements because they exculpated my client. He
15 needed a shooter. He didn't have it. And through
16 almost a dozen hours of questioning, finally he
17 overbore my client's will, and he produced this "I shot
18 him" statement.

19 And mysteriously, this statement, this -- but
20 that wasn't enough. Now he had the shooter but he had
21 to explain why he would shoot him. So now we have this
22 deal that my client supposedly makes with Mr. Orlando
23 to receive \$4,000 in exchange for the shooting, which
24 mysteriously, is absent from Detective Partee's notes
25 and winds up in Detective McHugh's notes. So I think

1 the record will speak for itself.

2 And I think that this Court, after reviewing
3 the record, is in a position to suppress based on a
4 lack of voluntariness, and I will rely on the record as
5 to all other matters, Judge.

6 THE COURT: Thank you.

7 MR. HOCHHEISER: Thank you, Judge.

8 THE COURT: Mr. Hayden.

9 MR. HAYDEN: Yes, your Honor. First of all,
10 your Honor, there was probable cause to arrest both
11 defendants based solely on the fact that there were two
12 warrants outstanding for both of them.

13 THE COURT: That's what I think too, but
14 defense counsel disagree with me.

15 MR. HAYDEN: I just want to cite a couple of
16 cases, Judge: People versus Retic, 265 AD2d page 855,
17 Fourth Department, 1999, which reads in part: When the
18 officer learned of the existence of the outstanding
19 warrant, he had probable cause to arrest defendant,
20 period.

21 THE COURT: Second Department talk about this
22 at all?

23 MR. HAYDEN: Yes, People versus Boone, your
24 Honor, B-O-O-N-E, 269 AD2d 459, Second Department,
25 2000, which reads in part: The detective's testimony

1 established the existence of a validly issued and
2 outstanding warrant pursuant to which he arrested the
3 defendant. Thus, the People met their burden of
4 demonstrating the legality of the police conduct.

5 THE COURT: I'm going to ask you to get those
6 cites up to me, or better yet, the cases if you have
7 them, because as you heard, of course, Mr. Hochheiser
8 has asked for a little bit of time to provide cases
9 contrary to those holdings, and I have given him time
10 to provide those cases.

11 MR. HAYDEN: I can give them to you right
12 now, Judge.

13 THE COURT: Thanks. We haven't heard from
14 the Supreme Court of the United States on this or the
15 Court of Appeals?

16 MR. HAYDEN: Not that I'm aware of, Judge..

17 THE COURT: Okay.

18 MR. HAYDEN: When it comes to Mr. Orlando,
19 your Honor, in addition to the two outstanding
20 warrants, police observed him driving without a valid
21 license. That alone gave them probable cause to arrest
22 him. Beyond that, there was probable cause to arrest
23 both defendants for the homicide. First of all, we
24 know that both defendants were in the vicinity of the
25 homicide at the time of the homicide. We know that

1 because of cell site records. Those cell site records
2 show that both of them were making calls from the
3 vicinity of the homicide just before it took place and
4 just after it took place.

5 Mr. Orlando told Tommy Flores and Barbara
6 Diamont that he and Herve Jeannot were together when
7 they went to meet Bobby. They lied about it. Orlando
8 lied about it when he told both of them that they met
9 on one side of Austin Boulevard by some junkyards by
10 McQuade's, by Puma's when in actuality they met on the
11 opposite side of Austin Boulevard approximately a mile
12 or so from the location where Mark Orlando told Ms.
13 Diamont and Tommy Flores that they met. It was a lie.

14 The evidence that the defendant told Barbara
15 Diamont -- Mark Orlando told Barbara Diamont that he,
16 while -- that he had learned that it was three shots to
17 the back of the head that killed Bobby, that alone
18 established probable cause for Mark Orlando's arrest,
19 and Mark Orlando, of course, said Jeannot was with him
20 at the time. That alone established probable cause for
21 his arrest because that was not public knowledge at the
22 time. The police didn't even have that information at
23 the time. This call was made Saturday morning, the
24 Saturday morning after the murder. The autopsy wasn't
25 even completed by that time. Detective McHugh had no

1 idea that it was three shots to the back of the head
2 that killed Bobby, but Mark Orlando knew it. The only
3 way Mark Orlando could have known it is by being there,
4 which, of course, he was, and he told Tommy Flores and
5 he told Barbara Diamont that he was with Herve Jeannot
6 at the time.

7 Both Tommy Flores and Barbara Diamont had
8 told detectives, including Detective McHugh, that they
9 saw Herve Jeannot and Mark Orlando together at LA
10 Fitness out in Farmingdale. They saw them after 7
11 o'clock that night; that they left about 7:15, 7:30;
12 that they were in a hurry; that they cut off their
13 workouts; that they were both eager to leave, and they
14 both left together approximately 7:15, 7:30. Given the
15 time it would take to get to the vicinity of the
16 murder, that would put them there together right about
17 the time of the murder. It was obvious they were going
18 somewhere together because each was trying to hurry the
19 other.

20 The telephone records showed that there was a
21 telephone call made at 8:24. That call was made by
22 Mark Orlando to Bobby Calabrese, and it would be
23 reasonable to conclude, given everything that Detective
24 McHugh knew, that that was a call where Mark Orlando
25 was telling Bobby where to meet up with him. And the

1 videotape showed that that location was in the vicinity
2 of the 7-11 on the opposite side of Austin Boulevard
3 from where Mark Orlando had been telling everyone he
4 had met with Bobby.

5 Detective McHugh was aware of a \$17,000
6 gambling debt. This gambling debt was Mark Orlando's
7 debt. He owed this money to Bobby Calabrese. He was
8 going to have to pay Bobby Calabrese. Detective McHugh
9 knew through Tommy Flores and Barbara Diamont that Mark
10 Orlando was a heavy gambler, not likely to have the
11 \$17,000 to pay back Bobby Calabrese the money he owed
12 him.

13 Now they come to that scene. You have the
14 lies about where they were. You've got another
15 telephone call at 8:38. That call is made by Sean
16 Monaghan to Bobby Calabrese. Bobby Calabrese is still
17 alive at that approximate time, and Bobby Calabrese is
18 telling Sean Monaghan, "I'm busy; I'll have to talk to
19 you later. I will call you later," which of course he
20 never does. Bobby's body is found within a minute or
21 so of that time. The 911 call comes in at 8:43, so we
22 can place the time of death somewhere in the 8:39
23 vicinity.

24 The defendant had told -- Mark Orlando had
25 told Tommy Flores that the meeting took place about

1 8:30, and there's very little time for Bobby to have
2 hooked up with someone else between approximately 8:30
3 and the time of the killing, approximately 8:39,
4 because what Mark Orlando is telling everyone is that
5 Bobby drove off in one direction and they drove off in
6 the opposite direction.

7 In addition, you had the videotape, and the
8 videotape showed what Detective McHugh determined to be
9 a Suzuki Verona which he knew was registered to Mark
10 Orlando's wife. He saw that vehicle circle in front of
11 the storage facility, in front of the storage facility
12 camera three times before finally coming to a stop.
13 The other camera picked it up coming to a stop down the
14 block, and it waited there for a couple of minutes.
15 And then Bobby's car came around and Bobby's car
16 stopped. Now this hooks up Mark Orlando, who's already
17 told everyone was with Herve Jeannot. It was only
18 logical to conclude that, given that they left LA
19 Fitness. Now, they're here.

20 A couple of minutes later a car stopped.
21 Figures get out of the vehicle. You can't tell what's
22 going on, but the next thing you know, the Verona is
23 pulling away two minutes or so later in the vicinity of
24 8:38 or so. Obviously there could be some time
25 differences. There could be some inaccuracies in the

1 telephone records or in the records of the videotape,
2 but the bottom line is by this time we've got Mark
3 Orlando and Herve Jeannot together at the scene of the
4 murder and then pulling off together after it's
5 reasonable to conclude Bobby was executed. That is
6 powerful evidence that these two were involved.

7 For probable cause it's required that we
8 establish that it's more likely than not that a crime
9 was committed and it's more likely than not that the
10 defendants are those who committed the crime. The
11 evidence of the crime is overwhelming. The discovery
12 of the body at 8:38, the examination of Bobby's dead
13 body by police, the determination that there were some
14 shots to the back of Bobby's head establishes beyond
15 any reasonable doubt -- forget about probable cause --
16 that the murder was committed and it is more likely
17 than not that Mark Orlando and Herve Jeannot are the
18 people who committed it. And the People submit to you
19 that with all of that evidence taken together, all of
20 the statements that they were together, the cell site
21 records placing them right there, the video placing
22 them right there before and pulling away right after
23 the murder, the statements to Tommy Flores about the
24 death.

25 He also tells Tommy Flores, Mark Orlando

1 does, that his betting line was cut off. He wanted to
2 make a couple of \$5,000 bets but he couldn't do it,
3 meaning he couldn't get back into the game. That
4 \$17,000 debt was outstanding. It was hanging. He had
5 no way to get it back. His line was cut off. People
6 submit to you it is reasonable to conclude that this
7 gambler, this addictive gambler, is going to be taking
8 drastic measures to alleviate a debt he simply couldn't
9 cover. That's a reasonable conclusion from everything
10 that the detectives had learned. Therefore, there is
11 probable cause to arrest both of them for the murder of
12 Bobby Calabrese.

13 As your Honor is aware, they were taken into
14 the Homicide Squad. Each was almost immediately read
15 Constitutional warnings. Each said he understood.
16 Each said he was willing to speak with the police and
17 each spoke with the police. There were breaks between
18 conversations. Each was offered food numerous times
19 over the course of that night into the following
20 morning. Each was offered water to drink, anything
21 they wanted to drink. Each was taken to the men's room
22 whenever he asked.

23 THE COURT: And each gave a completely
24 exculpatory written statement.

25 MR. HAYDEN: Each initially gave a completely

1 exculpatory written statement, which the police had
2 reasonable belief both statements were inaccurate, both
3 statements were untrue.

4 THE COURT: Let's jump beyond that.

5 MR. HAYDEN: Let's, yes.

6 THE COURT: Let's jump into Detective
7 Partee's testimony.

8 MR. HAYDEN: Yes, your Honor.

9 THE COURT: I want to talk about that.

10 MR. HAYDEN: Yes, your Honor. Detective
11 Partee spoke very frankly with Herve Jeannot. He made
12 no threats to Herve Jeannot. He made no promises to
13 Herve Jeannot. He deceived Herve Jeannot. There's no
14 question about that, and I have cases I want to cite to
15 the Court as far as deception is concerned.

16 THE COURT: Did he overbear his will by
17 telling him, in effect, without saying these words, but
18 the implication being and the inference to be drawn
19 being, you need to take part of the weight?

20 MR. HAYDEN: That is not the conclusion I
21 draw at all from Detective Partee's testimony. My
22 recollection of his testimony, which he stated on the
23 stand during cross-examination, was, "Are you going to
24 let him put all the weight on you?"

25 THE COURT: Inference being some of the

1 weight.

2 MR. HAYDEN: He wanted -- what his emphasis
3 was from the start to the finish of that conversation,
4 give me the truth. I don't believe what you're telling
5 me. Are you going to let this guy lay it all off on
6 you? You have got to be kidding. You let him put it
7 all on you and just walk out of here? There's no
8 question that Detective Partee said those things to
9 Herve Jeannot. The conversation was relatively short.
10 Detective McHugh estimated that from the start of the
11 conversation to the time Herve Jeannot said that he'd
12 shot Bobby Calabrese was approximately 20 minutes.
13 Detective Partee estimated approximately 25 minutes or
14 so.

15 But the initial stages of that conversation
16 were very friendly. The conversation involved Mr.
17 Jeannot's family, his background, his work background,
18 his schooling. They had something in common. They had
19 that connection with Kellenberg. There was some
20 discussion about the Marine Corps. There was some
21 discussion about his current occupation, and they went
22 briefly through the statement he'd already given to
23 Detective Brosnan, the innocent version -- I was just
24 there; I had nothing to do with it; we weren't
25 involved. We just paid him off and left is basically

1 what he was saying. It was a very short time,
2 reasonable estimate would be five to ten minutes before
3 Herve Jeannot came around and admitted that he had shot
4 Bobby Calabrese. And it was after confrontation that,
5 look, he's laying it all off on you.

6 This wasn't so. There's no question that
7 Detective Partee was deceiving Bobby Calabrese, but he
8 certainly wasn't overbearing his will. He was trying
9 to get through to him. He emphasized again and again,
10 "Are you going to let him get away with it? Are you
11 going to take all the weight?" That was more the
12 thrust of it. It's not "you got to take part of the
13 weight for this." Are you going to let him walk
14 scot-free? Are you going to let him put the whole
15 thing on you?

16 THE COURT: What about the conclusion that we
17 must inescapably look at, if not draw, mostly unsaid,
18 however some questions being asked, objections being
19 sustained, but it's in the record, the detective, in
20 effect, allying himself with the defendant based on a
21 common racial background and gaining his trust, where a
22 detective of another ethnicity might not have been able
23 to draw upon that resource?

24 MR. HAYDEN: The People submit to the Court
25 that any detective is fully within his rights to use

1 anything he can to try to induce a defendant to tell
2 the truth. A detective can use his ethnicity to
3 develop a relationship or rapport with the defendant.
4 There's nothing wrong with that. There's no case law
5 that indicates there's anything wrong with that.
6 Detectives can use a ruse to get through to a
7 defendant, to induce a defendant to tell the truth, to
8 explain what really happened. A detective can use
9 guile and cunning, and a detective can use flat out
10 deception. I would like to give you these cases before
11 I proceed any further on that issue.

12 THE COURT: I'd like to see them.

13 MR. HAYDEN: This is a quote, your Honor,
14 from People versus Joseph, 309 AD2d 946, Second
15 Department, the year 2003: It is well established that
16 a police officer's use of guile and deception need not
17 render a defendant's statements involuntary absent a
18 showing that the deception was so fundamentally unfair
19 as to deny due process or that a promise or threat was
20 made that could induce a false confession.

21 There's no promise. There's no threat.
22 Nothing during the course of that conversation amounts
23 to a promise or a threat.

24 THE COURT: I'm aware of that case.

25 MR. HAYDEN: I'd like to cite People versus

1 Louis, 239 AD2d 435, Second Department, 1997. People
2 versus Ingram, 208 AD2d 561, Second Department 1994.
3 And I quote from that case if I may, your Honor:
4 Although the police falsely informed the defendant
5 before obtaining his confession that the co-perpetrator
6 had implicated the defendant in the subject crime, the
7 ruse was not so fundamentally unfair as to deny due
8 process of law. That's Ingram.

9 I'd also like to cite People versus Foster,
10 193 AD2d 692, Second Department, 1993, and finally I'm
11 citing People versus Jackson, 140 AD2d 458, Second
12 Department, 1988. I'd like to quote from that case,
13 your Honor: The fact that the police falsely informed
14 the defendant before obtaining her confession that her
15 codefendants were in custody and had identified her as
16 the shooter did not mandate suppression of her
17 confession as a matter of law.

18 Once again I would emphasize, your Honor,
19 that there were no threats or promises made by
20 Detective Partee. Yes, he developed a rapport. Yes,
21 he developed a relationship, however quick that
22 relationship was developed with Herve Jeannot, and
23 appealed to Herve Jeannot to do nothing more than tell
24 the truth. And he tried to influence and induce Herve
25 Jeannot to tell the truth by telling him, "Are you

1 going to let him, the other guy, lay it all on you?"
2 without even explaining to Herve Jeannot exactly what
3 Orlando was saying. He just said, "He's laying it all
4 on you. The whole thing is you. Are you going to let
5 him get away with that?" It's the People's position
6 that that is not so fundamentally unfair as to render
7 this inadmissible or involuntary. Herve Jeannot
8 voluntarily told Detective Partee which, I submit to
9 the Court -- the People submit, should be obvious from
10 the description of the back and forth of that
11 conversation, all Herve Jeannot did is finally come
12 clean, get it off his chest and explain what had
13 happened that night and that's basically it.

14 Once again, what happened then after a very
15 brief conversation involving Detective Partee and Herve
16 Jeannot is Detective Partee immediately went out -- I
17 should say immediately asked Detective Trillo to get
18 Detective McHugh. It was Detective McHugh's case. He
19 knew the details. He'd understand what it was Herve
20 Jeannot was talking about. And Detective McHugh came
21 in, began reducing what he was saying to notes and then
22 to writing.

23 And once again, Herve was offered food. He
24 was offered anything he wanted to drink. He was
25 offered the men's room any time he chose to use it. I

1 also have cases to cite, your Honor, as far as the
2 length of interrogation. May I submit those, your
3 Honor?

4 THE COURT: Sure.

5 MR. HAYDEN: Actually, let me give you these
6 cases on deception now. The cases that deal with
7 length of interrogation, your Honor, first of all,
8 People versus Johnson, 265 AD2d 930, Fourth Department,
9 1999, a quote from that case: The length of
10 interrogation is not in itself determinative of the
11 voluntariness of the statements.

12 This interrogation lasted for 13 hours, and I
13 would remind the Court again that the conversation
14 between Herve Jeannot and Detective Partee is basically
15 20 minutes to a half an hour.

16 THE COURT: I'm less concerned with the
17 length of time of the interrogation quite frankly. The
18 concern I have is the one we've already talked about.

19 MR. HAYDEN: Yes. May I just give the rest
20 of these cases, Judge?

21 THE COURT: Of course.

22 MR. HAYDEN: People versus Miles, 276 AD2d
23 566, Second Department, the year 2000. This was an
24 interrogation of approximately 12 hours. People versus
25 Towndown, T-O-W-N-D-O-W-N, 236 AD2d 821, Fourth

1 Department, 1997, that was 14 hours. People versus
2 Abreu, 184 AD2d, page 707, this is Second Department,
3 1992, that also was 12 hours, your Honor.

4 Once again, the People's argument is that
5 Detective Partee did not overbear Herve Jeannot's will.
6 He simply spoke to him. He simply got through to him.
7 He simply communicated with him without use of any
8 threats, without use of any promises whatsoever, just a
9 direct, visceral appeal to his feelings, to his heart,
10 to try to induce him to get it off his chest, which,
11 it's the People's position, Mr. Jeannot voluntarily
12 did. And I would refer the Court, of course, to those
13 cases that I've cited.

14 Is there any other issue the Court would like
15 me to address?

16 THE COURT: Well, the Court's attention has
17 been directed to the consent searches as well or the
18 consent forms leading to the swabs and the search of
19 Mr. Orlando's desk. So if you just want to tell me
20 what you think about those positions, I'll consider it.

21 MR. HAYDEN: It's the People's position that
22 both defendants had already signed rights' cards. They
23 already said they understood their rights and were
24 willing to speak with detectives before those
25 conversations took place. The description on the

1 record is that those forms were read to each defendant
2 and explained to each defendant to whatever extent the
3 defendant wanted the form explained, and then the
4 defendants voluntarily signed those forms and consented
5 to the search.

6 One other thing I would like to submit to the
7 Court, Judge, is I have case law on arrests for
8 warrants or arrests for other matters and then
9 conversations about more serious matters.

10 THE COURT: Here's how I'd like to handle
11 that: As Mr. Hochheiser has asked to be able to
12 research a point and provide me with authority and you
13 seek to do the same -- I understand all of your
14 arguments -- I'd like to put this on for tomorrow
15 morning for final argument on these small points now,
16 now small points, and then I'll make my determination.

17 However, I just want you all to know at this
18 point I have been given the authority by the referring
19 court to take a look at the search warrant. I have
20 looked at the search warrant. I find it valid and
21 that's the end of that question as far as I'm concerned
22 as far as this level of court is concerned.

23 Gentlemen, I will see you all tomorrow
24 morning.

25 MR. HAYDEN: Judge, if I just might submit to

1 the Court, I have these cases already.

2 MR. HOCHHEISER: Judge, so the record is
3 clear, your decision on the search warrants, in making
4 your decision you reviewed the underlying applications,
5 et cetera?

6 THE COURT: Yes, I've taken a look at each of
7 the warrants. I find them to be validly affirmed and
8 signed off on and returned. I'm satisfied with the
9 search warrants.

10 MR. HOCHHEISER: Thank you very much, Judge.
11 (Whereupon, the hearing was adjourned until April 21, 2005.)

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